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Attorneys for Defendants
HANESBRANDS INC.
SARA LEE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TINA HOPSON, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

HANESBRANDS INC.; SARA LEE
CORPORATION and Does 1 through 50,
inclusive,

Defendants.

CV 08

CASE NO.

0844

**NOTICE OF REMOVAL OF CIVIL
ACTION TO THE UNITED STATES
DISTRICT COURT UNDER 28 U.S.C.
§§ 1331 AND 1441(B); DECLARATION OF
ANNE NERGAARD IN SUPPORT
THEREOF**

Marin County Superior Court Case No. CV
072378

1 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA; PLAINTIFF TINA HOPSON AND TO HER
3 ATTORNEYS OF RECORD, EDWARD J. WYNNE AND J.E.B. PICKETT AT THE WYNNE
4 LAW FIRM:

5
6 PLEASE TAKE NOTICE THAT on February 7, 2008, defendants Hanesbrands
7 Inc. and Sara Lee Corporation (collectively, "Defendants") removed this action from the Superior
8 Court of California in and for the County of Marin ("Superior Court") to this Court, based on
9 federal question jurisdiction under 28 U.S.C. sections 1331 and 1441(a) and (b), and, in support
10 of removal, Defendants allege as follows:

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12
13 1. On or about May 21, 2007, plaintiff Tina Hopson ("Plaintiff") filed a
14 Complaint in the Superior Court entitled: *"Tina Hopson, individually, and on behalf of others*
15 *similarly situated, v. Hanesbrands, Inc.; Sara Lee Corporation and Does 1 through 50,*
16 *inclusive,"* designated as Case No. CV072378. The Complaint alleged two purported causes of
17 action as follows: (1) Violations of the California Labor Code, including violation of California
18 statutory provisions regarding overtime pay, vacation time, payment of wages at the time of
19 discharge, meal and rest breaks, pay stubs, and recordkeeping; and (2) Violations of California
20 Business and Professions Code section 17200. The allegations of the Complaint are incorporated
21 into this notice by reference without necessarily admitting the truth of any of them. The
22 Complaint was not served on Defendants.

23
24 2. On or about July 27, 2007, Plaintiff filed and served a First Amended
25 Complaint and Summons. The First Amended Complaint included the parties described in
26 Paragraph 1, *supra*, and added allegations under California Labor Code sections 2698 and 2699 to
27 the first cause of action. A copy of the First Amended Complaint is attached as Exhibit B to the
28

1 Declaration of Anne Nergaard In Support of Notice of Removal. *See* Declaration of Anne
2 Nergaard ("Nergaard Decl." or "Nergaard Declaration"), ¶ 3.

3
4 3. Defendants filed and served their Answer to the First Amended Complaint
5 on August 27, 2007. A copy of the Answer is attached as Exhibit C to the Nergaard Declaration.
6 *See* Nergaard Decl. ¶ 4.

7
8 4. On or about January 3, 2008, Plaintiff filed a Second Amended Complaint
9 in the Superior Court and a Joint Stipulation and Order regarding the Filing of the Second
10 Amended Complaint. The Second Amended Complaint included the parties described in
11 Paragraph 1, *supra*. The Second Amended Complaint included the causes of action raised in the
12 First Amended Complaint and added a third cause of action under the Fair Labor Standards Act
13 ("FLSA"), 29 U.S.C. section 201 *et seq.* The Superior Court entered the stipulation on January 3,
14 2008. Defendants accepted service of the Second Amended Complaint on January 11, 2008. A
15 copy of the Second Amended Complaint, Joint Stipulation and Order Re: Filing of Second
16 Amended Complaint, and Notice and Acknowledgment of Receipt of the Second Amended
17 Complaint are attached as Exhibits D, E and F, respectively, to the Nergaard Declaration. *See*
18 Nergaard Decl. ¶ 5.

19
20 5. On February 6, 2008, Defendants filed an Answer to the Second Amended
21 Complaint. A copy of the Answer to the Second Amended Complaint is attached hereto as
22 Exhibit G to the Nergaard Declaration. *See* Nergaard Decl. ¶ 6.

23
24 6. Does 1 through 50 are unnamed and unknown, and, therefore, have not
25 been served with Plaintiff's Summons, the First Amended Complaint, or the Second Amended
26 Complaint.

1 7. Defendants have also been served with a Notice of Unavailability of
2 Counsel (received December 5, 2007). A copy of the Notice of Unavailability of Counsel is
3 attached as Exhibit H to the Nergaard Declaration. *See* Nergaard Decl. ¶ 7. Defendants have not
4 been served with any other process, pleadings, or orders.

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6 8. Defendants Hanesbrands Inc. and Sara Lee Corporation join in the removal
7 of this action.

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10 9. The Second Amended Complaint added a cause of action under federal
11 law, 29 U.S.C. section 201 *et seq.* The previously served complaints — the Complaint and First
12 Amended Complaint — did not include a cause of action under federal law. *See* Nergaard Decl.
13 ¶ 4; Exh. B. Defendants accepted service of the Second Amended Complaint on January 11,
14 2008. *See id.* ¶ 5, Exh. F. Accordingly, this Notice of Removal is being filed timely pursuant to
15 28 U.S.C. § 1446(b).

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17 10. Venue of this Action is properly laid in this District pursuant to 28 U.S.C.
18 section 1441(a) because the Superior Court is located within this District.

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20 11. In accordance with 28 U.S.C. section 1446(d), Defendants will, promptly
21 after filing the Notice of Removal, give written notice of the Notice of Removal to the adverse
22 party and will file a copy of this Notice of Removal with the Superior Court. A true and correct
23 copy of this Notice is attached as Exhibit I to the Nergaard Declaration. *See* Nergaard Decl. ¶ 8.

REMOVAL IS BASED ON FEDERAL QUESTION JURISDICTION

12. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. section 1331 and is one which Defendants may remove to this Court pursuant to 28 U.S.C. section 1441(b) based upon federal question jurisdiction.

13. The Complaint properly may be removed on the basis of federal question jurisdiction. This Court has original jurisdiction because Plaintiff alleges a claim that arises under federal law. *See* 28 U.S.C. § 1331.

14. Plaintiff's third cause of action arises under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA").

15. In her Complaint, Plaintiff alleges that the FLSA "states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week," that the class of persons Plaintiff purports to represent in this cause of action, the existence of which is expressly denied by Defendants, "work[ed] more than 40 hours per week but were not paid overtime at a rate equal to 1.5 times the employee's regular rate of pay." Plaintiff further alleges that the class of persons Plaintiff purports to represent in this cause of action, the existence of which is expressly denied by Defendants, "do not meet the tests for exempt status under the FLSA." *See* Second Amended Complaint ¶¶ 31, 32, at Nergaard Decl. ¶ 5 Exh. C. Based on these allegations, the Complaint properly may be removed on the basis of federal question jurisdiction under the FLSA. Thus, pursuant to Section 216(b), the third cause of

1 action in Plaintiff's Second Amended Complaint raises a federal question over which this Court
2 has jurisdiction.

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5 16. Accordingly, because Plaintiff's Second Amended Complaint arises "under
6 the . . . laws . . . of the United States," 28 U.S.C. section 1331, it is removable to federal court
7 pursuant to 28 U.S.C. § 1441(b).

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10 17. This Court has and should exercise supplemental jurisdiction over any and
11 all remaining state law claims in the Complaint because they are "so related to claims in the
12 action within the original jurisdiction that they form part of the same case or controversy under
13 Article III of the United States Constitution." 28 U.S.C. § 1367(a); *see also Executive Software*
14 *N. Am. v. United States Dist. Court*, 24 F.3d 1545, 1555 (9th Cir. 1994) (power to entertain
15 supplemental jurisdiction conferred in mandatory terms). Consequently, considerations of
16 judicial economy and fairness to litigants require that all of Plaintiff's causes of actions against
17 Defendants be litigated together in a single action. *See United Mine Workers v. Gibbs*, 383 U.S.
18 715, 725-26 (1966).

19
20 **INTRADISTRICT ASSIGNMENT**

21
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23 18. This is a civil action originally filed in Marin County Superior Court.
24 Hanesbrands Inc. employed Service Associates (employees who allegedly form the purported
25 class) in California during the relevant statutory time period. During some or all of her
26 employment, the Plaintiff resided in San Mateo County. All civil actions that arise in Marin
27 County and San Mateo County shall be assigned to the San Francisco Division or the Oakland
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1 Division. N.D. CAL. CIV. RULE 3-2(d). Therefore, this action is properly assigned to the San
2 Francisco Division or Oakland Division.

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4 WHEREFORE, pursuant to the provisions of 28 U.S.C. § 1441, this action is
5 removed to this Court from the Superior Court.

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8 DATED: February 7, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP

9
10 By: 

11 ANNE W. NERGAARD

12 Attorneys for Defendants
13 HANESBRANDS INC.
14 SARA LEE CORPORATION
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JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Tina Hopson

DEFENDANTS

Hanesbrands Inc., Sara Lee Corporation

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Edward J. Wynne

Wynne Law Firm

100 Drakes Landing Rd., Suite 275

Greenbrae, CA 94904

(415) 461-6400 (See Attachment)

Attorneys (If Known)

M. Kirby C. Wilcox

Paul, Hastings, Janofsky & Walker LLP

55 Second Street, 24th Floor

San Francisco, CA 94105

(415) 856-7000 (See Attachment)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Nation ☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER SPECIALS
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	PERSONAL PROPERTY	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 370 Other Fraud	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 371 Truth in Lending	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	Habeas Corpus:			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. section 201 et seq.

Brief description of cause:

Fair Labor Standards Act; failure to pay overtime.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

February 7, 2008

SIGNATURE OF ATTORNEY OF RECORD

James W. Merzard

ATTACHMENT TO CIVIL COVER SHEET

Wynne Law Firm

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